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November 16, 2021

The Honorable Jocelyn G. Boyd
Chief Clerk and Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: Docket No. 2021-291-A. Generic Docket to Study and Review Prefiled Rebuttal and Surrebuttal Testimony in Hearings and Related Matters.

Dear Ms. Boyd:

South Carolina Water Utilities, Inc. ("SCWU"), on behalf of itself and its affiliates in South Carolina,¹ writes in response to Order No. 2021-736 requesting comments on procedure, substance, and timelines for prefiled testimony and exhibits, including the need for prefiled written rebuttal or surrebuttal testimony.

SCWU believes the Commission should preserve rebuttal testimony. Parties should have the opportunity to respond to one another's positions in writing before the hearing. Pre-filed rebuttal testimony alerts the Commission and the parties to disputed issues before the hearing and allows them to prepare accordingly. Pre-filed rebuttal is especially critical to the orderly adjudication of rate cases because it provides the utility the opportunity to respond to ORS's, or other parties', accounting adjustments. However, the Commission should restrict the use of surrebuttal testimony, allowing it only to respond to novel issues raised in rebuttal. The Commission should also require advance permission for surrebuttal to ensure it is used for its intended purpose.

The Commission may also wish to change the sequence of direct and rebuttal testimony. For example, the Commission could allow two rounds of testimony and require all parties to file direct and rebuttal testimony on the same schedule. In the alternative, the Commission could allow three rounds of testimony rather than four as currently practiced. Specifically: (1) the utility would file direct testimony; (2) ORS and other intervenors would file direct testimony; and (3) all parties would file rebuttal testimony. Either of these changes would give all parties an equal opportunity to respond to one another's position. The current pre-filing sequence favors respondents, who are generally allowed to prefile direct testimony after the applicant and given the last word in surrebuttal, a practice contrary to the general principle of civil litigation that the party with the

¹ Kiawah Island Utility, Inc.; South Carolina Water Utilities – CUC, Inc.; South Carolina Water Utilities – PUI, Inc.; & Palmetto Wastewater Reclamation, Inc.

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burden of proof has the right of reply.² Also, if the number of rounds of testimony is reduced, more time could be provided between filings, allowing more discovery and better hearing preparation.

Thank you for the opportunity to provide our comments.

With best wishes, I am,

Sincerely yours,

s/ Charlie Terreni

Charles L.A. Terreni

c: Counsel of Record

² See e.g. *Daniel v. Tower Trucking Co.*, 205 S.C. 333, 351, 32 S.E.2d 5, 10 (1944) (“He upon whom lies the burden of proof has the right to offer reply (rebuttal) testimony to that of his adversary and the latter's witnesses, provided it is in the nature of true reply and not such as should have been offered in the case in chief.”)